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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	CC Docket No. 98-14
	)	
Number Portability Query Services	)	
	)	
Ameritech Tariff F.C.C. No. 2, Transmittal No. 1149, as Amended	)	CCB/CPD 98-26
	)	
Bell Atlantic Tariff F.C.C. No. 1, Transmittal No. 1041	)	CCB/CPD 98-25
	)	
Pacific Bell Tariff F.C.C. No. 128, Transmittal Nos. 1927 and 1973	)	CCB/CPD 98-23
	)	
Southwestern Bell Tariff F.C.C. No. 73, Transmittal Nos. 2638 and 2694	)	CCB/CPD 98-17
	)	

**PETITION FOR RECONSIDERATION  
OF COMCAST CELLULAR COMMUNICATIONS, INC.**

Comcast Cellular Communications, Inc. ("Comcast"), by its attorneys, pursuant to Section 1.106 of the Commission Rules, seeks reconsideration of the August 19, 1998 order concluding the investigation of the above-referenced tariff revisions.<sup>1/</sup> This petition for reconsideration should be granted because the *Query Service Order* decision does not conform with well-established Commission practice and involves a question of lawfulness that must be resolved by the Commission. The Commission is obligated to address each of the relevant issues raised in the investigation and to determine whether Bell Atlantic has met its burden of proof in accordance with Section 204(a) of the Communications Act of 1934, as amended (the "Act").

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<sup>1/</sup> See Number Portability Query Services, *Order*, CC Docket No. 98-14, FCC 98-204, rel. August 19, 1998 (the "*Query Service Order*").

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Also, the Commission must ensure that accurate accounts are maintained of all amounts received under the subject tariff revisions.

## I. BACKGROUND

On October 30, 1997, the Competitive Pricing Division of the Common Carrier Bureau granted the Petition of Bell Atlantic to establish new service rate elements to provide prearranged and default number portability query services for other carriers that deliver unqueried traffic to Bell Atlantic for termination.<sup>2/</sup> The Division staff determined, however, that Bell Atlantic's proposed tariff revision raised substantial questions of lawfulness warranting suspension and investigation.<sup>3/</sup> Thus, the Commission suspended Bell Atlantic's tariff revisions for one day and imposed an accounting order with respect to the services offered under the tariff revisions.<sup>4/</sup>

On January 30, 1998, the Commission issued an order designating the long-term number portability query service tariffs of Bell Atlantic and other incumbent local exchange carriers ("ILECs") for investigation, and directed Bell Atlantic to file a direct case presenting its position.<sup>5/</sup> Comcast filed an opposition to the direct case of Bell Atlantic, requesting that certain

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<sup>2/</sup> See Petition of Ameritech to Establish a New Access Tariff Service and Rate Elements Pursuant to Part 69 of the Commission's Rules; Ameritech Tariff F.C.C. No. 2; Petition of Bell Atlantic to Establish New Service Access Tariff Rate Elements Pursuant to Part 69 of the Commission's Rules; Bell Atlantic Tariff F.C.C. No. 1, *Memorandum Opinion and Order*, 12 FCC Rcd 17605 (1997).

<sup>3/</sup> *Id.* at 17613.

<sup>4/</sup> *Id.*

<sup>5/</sup> See Number Portability Query Services, *Order Designating Issues for Investigation*, CC Docket No. 98-14, DA 98-182, rel. January 30, 1998 (the "*First Designation Order*").

elements of Bell Atlantic's Transmittal No. 1009 be declared unlawful.<sup>6/</sup> Before the Commission could issue an order on the merits, Bell Atlantic filed superseding tariff revisions and indicated an intent to refund charges collected under the initial tariff revisions.<sup>7/</sup> Because Bell Atlantic filed superseding tariff revisions, the Commission terminated its investigation of Transmittal No. 1009 as moot.<sup>8/</sup>

On June 17, 1998, the Commission suspended and set for investigation Bell Atlantic's revised tariff Transmittal No. 1041.<sup>9/</sup> The issues designated for investigation included (i) whether imposing query charges is reasonable if no number has ported from an NXX and (ii) whether it would be reasonable to require ILECs, such as Bell Atlantic, to recover all of their query service costs only in NXXs from which a number has ported.<sup>10/</sup> Comcast renewed its claims in the form of an opposition, arguing that the practice of assessing default query charges on calls to non-ported NXXs is unlawful.<sup>11/</sup> Comcast further stated that Bell Atlantic's direct

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<sup>6/</sup> See Opposition of Comcast Cellular Communications, Inc. to Direct Case of Bell Atlantic, Number Portability Query Services, CC Docket No. 98-14, filed February 20, 1998. Specifically, Comcast requested that carriers not be required to compensate Bell Atlantic for database queries at switches where portability has not been requested by a carrier. *Id.* at 3-5. Comcast also requested clarification that local exchange carriers providing transit services are N-1 carriers responsible for database queries. *Id.* at 5-8.

<sup>7/</sup> See Number Portability Query Services, *Tariff Investigation and Termination Order*, CC Docket No. 98-14, FCC 98-50, rel March 30, 1998 (the "*Termination Order*").

<sup>8/</sup> *Id.*

<sup>9/</sup> See Number Portability Query Services, *Order Designating Issues for Investigation*, CC Docket No. 98-14, DA 98-1173, rel. June 17, 1998 (the "*Second Designation Order*").

<sup>10/</sup> *Id.*

<sup>11/</sup> See Opposition of Comcast Cellular Communications, Inc. to Direct Case of Bell Atlantic, Number Portability Query Services, CC Docket No. 98-14, filed July 10, 1998 (the

case was incomplete and unsupported because it failed to justify the imposition of default query charges for calls to non-ported NXXs.<sup>12/</sup>

On August 19, 1998, the Commission released its *Query Service Order*, completing the investigation. The *Query Service Order* allowed Bell Atlantic and other ILECs to continue offering, on an interim basis, their long-term number portability query and database services under the rates and conditions contained in their most recent tariff revisions. The Commission concluded that it was unable to determine whether the ILEC tariff revisions were reasonable or otherwise lawful within the 5 month period prescribed by Section 204 of the Act.<sup>13/</sup>

The *Query Service Order* also declined to address any of the non-cost arguments raised in the investigation, including arguments made by Comcast, and made no determination as to whether Bell Atlantic had met its burden of proof in its direct case as required under the Act. Moreover, the decision made no mention of an accounting order to ensure that accurate accounts are maintained until the Commission can determine whether the ILEC tariff revisions are reasonable or otherwise lawful. For these reasons, Comcast requests that the Commission grant its petition for reconsideration of its *Query Service Order*.

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"Opposition").

<sup>12/</sup> *Id.* at 8-11.

<sup>13/</sup> *Query Service Order* at 7. According to the order, it will not be possible to determine whether the ILECs properly identified their carrier-specific costs directly related to long-term local number portability until it has had an opportunity to review and consider comments and replies filed on the *Further Notice* on the identification of number portability costs, and tariffed end-user charges. Because the ILECs are not expected to tariff their end-user charges until January, 1999, the Commission reasoned that it could not determine the reasonableness of the ILEC cost allocations until then. *Id.* at 7-8.

## II. **THE *QUERY SERVICE ORDER* IS DEFICIENT AND CONTRARY TO COMMISSION PRECEDENT.**

As the Commission acknowledged in its *Query Service Order*, Section 204(a) of the Act, requires that the Commission issue an order concluding a tariff investigation within five months after the date that the charge or practice under investigation becomes effective.<sup>14/</sup> Although the Commission did release an order concluding its investigation, the order failed to address any of the substantive arguments raised by parties and also did not address the critical issue of whether Bell Atlantic met its burden of proof as required under Section 204(a).

### A. **The *Query Service Order* Failed to Address the Arguments Presented.**

The *Query Service Order* is deficient because it fails to address each of the relevant issues raised in the investigation by interested parties. Even assuming that the Commission had the discretion not to address the cost issues raised by the tariffs, there is no basis for not addressing the non-cost issues raised by Comcast and other parties. Indeed, the Commission specifically identified only cost-related issues in declining to take action:

"These are new services with which neither the Commission nor carriers have had much experience and, as discussed above, the Commission will not be able to determine what rates and conditions are reasonable until issues are resolved regarding both the identification of costs directly related to number portability, and the allocation of those costs between query and end-user charges."<sup>15/</sup>

The Commission's reasons for delaying its decision on cost issues are not applicable or relevant to the issue of whether assessing default query charges on calls to non-ported NXXs is a reasonable or otherwise lawful practice. Moreover, the Commission cannot defer consideration

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<sup>14/</sup> See *Query Service Order* at 7.

<sup>15/</sup> *Id.* at 10.

of this issue merely because it involves novel services. The Commission is routinely called upon to address novel issues and new service offerings, especially with regard to implementation of the provisions of the Telecommunications Act of 1996.<sup>16/</sup> Accordingly, it was improper for the Commission to delay its determination of whether assessing default query charges to non-ported NXXs is lawful.

**B. The *Query Service Order* Did Not Consider Whether Bell Atlantic Met Its Burden of Proof in Accordance with Section 204(a).**

The *Query Service Order* also failed to consider whether Bell Atlantic had met its burden of proof. Under Section 204(a), carriers proposing new or revised charges have the burden of proof to show that the new charge is just and reasonable.<sup>17/</sup> In accordance with this provision, the Commission consistently has held that the carrier bears the burden of proof of showing that its rate is just and reasonable.<sup>18/</sup> Thus, in determining whether to permit a carrier to assess a new charge subject to investigation, the Commission must consider whether the carrier has met its burden of proof showing that the new charge is lawful.

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<sup>16/</sup> See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *Third Order On Reconsideration and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 12460 (1997) (holding that shared transport should be treated as an unbundled network element), *aff'd*, *Southwestern Bell Telephone Co. v. FCC*, Nos. 97-3389, 97-3576, 97-3663, 9-4106, 1998 U.S. App. LEXIS 18352, at \*1 (8th Cir. Jan 15, 1998).

<sup>17/</sup> 47 U.S.C. § 204(a).

<sup>18/</sup> See, e.g., *Beehive Telephone Company, Inc., Beehive Telephone, Inc. Nevada; Tariff F.C.C. No. 1, Memorandum Opinion and Order*, CC Docket No. 97-249, FCC 98-105, rel. June 1, 1998; *Investigation of Special Access Tariffs of Local Exchange Carriers, Order*, 12 FCC Rcd 13677 (1997).

The *Query Service Order* does not conclude that Bell Atlantic has met its burden of proof in accordance with Section 204(a). In fact, the Commission indicates that it could not determine whether each carrier had met its burden of proof under the Act.<sup>19/</sup> Despite this conclusion, the Commission determined that it would permit Bell Atlantic Transmittal No. 1041 to go into effect. This decision is plainly inconsistent with the requirements of Section 204(a).

If the Commission is unable to determine whether a carrier has met its burden of proof, the carrier cannot have met its burden of proof under the Act and, thus, the subject charge cannot be permitted to go into effect. By allowing carriers to assess new charges under investigation without meeting their burden of proof, the Commission essentially is disregarding its statutory duty to require carriers to prove that their rates are just and reasonable. This action was erroneous and must be reconsidered.

### **III. THE COMMISSION MUST ENSURE THAT ACCURATE ACCOUNTS ARE KEPT.**

In adopting its *Second Designation Order*, the Commission, contrary to routine practice, neglected to issue a new accounting order requiring that Bell Atlantic and other ILECs keep accurate accounts of all amounts associated with the rates that are under investigation. Similarly, the *Query Service Order* contains no reference to an accounting order, even though the Commission delayed any determination as to whether the proposed charges are reasonable or otherwise lawful. Although an accounting order was initiated by the Commission in its *First*

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<sup>19/</sup> See *Query Service Order* at 9-10.

*Designation Order*, that investigation was terminated by Commission order on March 30, 1998.<sup>20/</sup>

Section 204(a) of the Act permits the Commission to require carriers to keep accurate accounts of all amounts it receives under the charge for the new service.<sup>21/</sup> It is standard practice for the Commission to impose an accounting order when a tariff is suspended and set for investigation to ensure that accurate accounts of amounts received under the charge are maintained.<sup>22/</sup> Accounting orders play an essential role in confirming important information to make appropriate refunds.<sup>23/</sup> Due to the large number of carriers that will be purchasing query services from Bell Atlantic, it may prove extremely difficult for Bell Atlantic to easily identify purchasers and readily calculate refunds in the absence of just such an accounting order.

Accounting orders are especially critical in circumstances where the Commission permits a questionable charge to go into effect, albeit temporarily. Given the Commission's decision to delay a ruling on the lawfulness of the subject tariff revisions, the Commission must clarify that the original accounting order is still in effect or, in the alternative, issue an accounting order to ensure that accurate amounts are refunded to carriers in the event that the tariff revisions are

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<sup>20/</sup> See *Termination Order* at 1. But see *Telephone Number Portability, Third Report and Order*, CC Docket No. 95-116, FCC 98-82, rel. May 12, 1998 (implying that the accounting orders adopted in the *First Designation Order* remain pending).

<sup>21/</sup> 47 U.S.C. § 204(a).

<sup>22/</sup> See, e.g., *GTE Telephone Operating Companies, GTOC Tariff No. 1, GTOC Transmittal No. 1172, Order*, CC Docket No. 98-79, DA 98-1837, rel. September 11, 1998; *BellSouth Telecommunications, Inc., Bell South Tariff FCC No. 1, BellSouth Transmittal No. 476, Order Suspending Tariff and Designating Issues for Investigation*, CC Docket No. 98-161, DA 98-1734, rel. September 1, 1998.

<sup>23/</sup> See 1985 Annual Access Tariff Filings, *Memorandum Opinion and Order on Reconsideration*, 4 FCC Rcd 3959, 3962 (1989).




found to be unlawful. Any decision to the contrary would be inconsistent with well-established Commission precedent and practice.

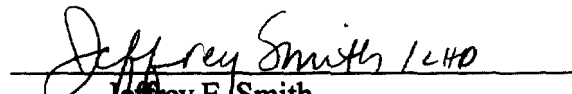
#### IV. CONCLUSION

For the foregoing reasons, Comcast respectfully requests that the Commission grant Comcast's petition for reconsideration and address the arguments raised in its investigation. Comcast also requests that the Commission suspend the subject tariff revisions until it determines that each ILEC has met its burden of proof and clarify that each carrier must keep accurate accounts of any amounts received pursuant to the subject tariff revisions.

Respectfully submitted,

**COMCAST CELLULAR  
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September 18, 1998

## **CERTIFICATE OF SERVICE**

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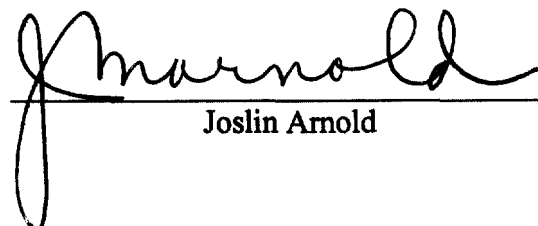
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